

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**UNIFIED HOLDINGS LLC, A Nebraska
Limited Liability Company,**

Plaintiff,

v.

**OPTICAL PRODUCTS
DEVELOPMENT CORP., A Delaware
Corporation, and KENNETH
WESTORT, an individual,**

Defendants.

CASE NO. 8:07CV423

**MEMORANDUM
AND ORDER**

On November 10, 2008, the Court conducted an evidentiary hearing to determine the amount and/or rate of prejudgment interest to which Plaintiff is entitled and the date on which the cause of action that gives rise to the award of prejudgment interest arose.

In its Motions for Default Judgment against Defendants Optical Products Development Corp. and Kenneth Westort (Filing Nos. 18 and 20), the Plaintiff alleged that it is entitled to prejudgment interest.¹ In a previous Memorandum and Order (Filing No. 22) the Court granted the Motions for Default Judgment and found that Plaintiff was entitled to prejudgment interest. The Court, noting that controlling New York law requires that the amount and/or rate of prejudgment interest and the date on which the cause of action giving rise to the award of prejudgment interest be certain, set the matter for an evidentiary hearing. Prior to the hearing, the Plaintiff filed an affidavit (Filing No. 27) in support of its

¹Defendants Optical Products Development Corp. and Kenneth Westort were declared in default by the Clerk's Entry of Default of May 14, 2008 (Filing No. 16).

request for prejudgment interest. At the hearing² Plaintiff's counsel requested leave of the Court to file an amended affidavit clarifying the dates and amounts for each of the six promissory notes which are at issue in this matter. Leave was granted by the Court and an amended affidavit along with a certificate of service were filed by Plaintiff's counsel on November 16, 2008 (Filing Nos. 30 & 31). The matter of prejudgment interest is now before the Court for consideration.

The Court has considered the pleadings and records filed in this action, including the amended affidavit of plaintiff's counsel in support of its claim for prejudgment interest (Filing No. 30). The Court accepts the Plaintiff's representations of the amounts of principal, rate and amount of pre-judgment interest, and date on which the cause of action arose for four of the six promissory notes as follows:

Promissory Note 1:

Principal:	\$200,000.00
Interest Rate:	8% A.P.R.
Interest Amount:	\$ 31,447.16
Date:	October 13, 2006

Promissory Note 2:

Principal:	\$105,000.00
Interest Rate:	8% A.P.R.
Interest Amount:	\$ 14,907.27
Date:	May 15, 2007

Promissory Note 3:

Principal:	\$50,000.00
Interest Rate:	8% A.P.R.
Interest Amount:	\$ 8,635.07
Date:	February 11, 2007

²Defendants did not appear for the evidentiary hearing. In accordance with the Court's previous order of August 6, 2008, Plaintiff's counsel had provided Defendants with notice of the proceedings via certified mail (Filing No. 26).

Promissory Note 4:

Principal:	\$250,000.00
Interest Rate:	8% A.P.R.
Interest Amount:	\$ 37,394.90
Date:	May 15, 2007

The amended affidavit of plaintiff's counsel in support of its claim for prejudgment interest (Filing No. 30) also makes the following representations:

Promissory Note 5:

Principal:	\$240,000.00
Interest Rate:	20% A.P.R.
Interest Amount:	\$ 52,423.65
Date:	November 1, 2007

Promissory Note 6:

Principal:	\$200,000.00
Interest Rate:	12% A.P.R.
Interest Amount:	\$ 34,515.72
Date:	January 4, 2008

The Court notes that the Plaintiff's cause of action, with respect to Promissory Notes 5 and 6, arose after the filing of the Complaint on October 31, 2008 (Filing No. 1). Therefore, the Plaintiff is not entitled to judgment on these promissory notes and the claimed damages and prejudgment interest will be reduced accordingly.

In conclusion, the Court finds and concludes that the Plaintiff is entitled to an award of \$697,384.40 (\$605,000.00 in damages and \$92,384.40 in prejudgment interest) in addition to post-judgment interest from the date of entry of the judgment in this matter.

IT IS SO ORDERED.

Dated this 15th day of December, 2008.

BY THE COURT

s/Laurie Smith Camp
United States District Judge